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5 IN THE UNITED STATES DISTRICT COURT
6 FOR THE NORTHERN DISTRICT OF CALIFORNIA
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8 MILLENNIUM FRANCHISE GROUP,
9 LLC,

10 Plaintiff,

11 v.

12 ARIC K. PERMINTER, et al.,

13 Defendants.

Case No. 21-cv-08684-CRB

**ORDER GRANTING MOTION FOR
SERVICE BY PUBLICATION**

14 Plaintiff Millennium Franchise Group (“Millennium”) brings various causes of
15 action against Defendants Aric K. Perminter (“Aric K.”), Aric D. Perminter (“Aric D.”),
16 and Lynx Technologies Partners (“Lynx”) stemming from alleged embezzlement. First
17 Am. Compl. (dkt. 11). After a prior motion to serve Aric D. by publication was denied,
18 see dkt. 58, Millennium renews its motion. See Mot. (dkt. 64). Finding this matter
19 suitable for resolution without oral argument pursuant to Civil Local Rule 7-1(b), the Court
20 GRANTS Plaintiff’s motion.

21 While the Court’s prior order held that Millennium had failed to exercise
22 “reasonable diligence” in its attempts to serve Aric D., the Court is satisfied that
23 Millennium has now taken “those steps which a reasonable person who truly desired to
24 give notice would have taken under the circumstances.” Donel, Inc. v. Badalian, 87 Cal.
25 App. 3d 327, 333 (1978). This includes multiple attempts at mail and personal service,
26 requests for Aric D.’s address from his attorney and his father (and co-defendant), and
27 exhaustive internet and records searches. See Hubins Decl. (dkt. 64-1) ¶¶ 5–20.

28 Though service by publication is proper, the Court takes issue with Millennium’s

1 suggestion of the East Bay Express as the publication “most likely to give actual notice to
2 [Aric D.]” Mot. ¶ 3. Nothing in Millennium’s investigation of Aric D. suggests that he
3 lives in California; service was attempted in New York and Pennsylvania, and the best clue
4 as to Aric D.’s current whereabouts, his LinkedIn profile, lists his city as Phillipsburg,
5 New Jersey. See Hubins Decl. ¶¶ 5–8, 14. While “it is generally recognized that service
6 by publication rarely results in actual notice,” Espindola v. Nunez, 199 Cal. App. 3d 1389,
7 1392–93 (1988), and Millennium assumes that Aric D.’s attorney will notify him once
8 service by publication is effected, see Hubins Decl. ¶ 21, California law nonetheless
9 requires that the summons shall be published in “a named newspaper . . . that is most likely
10 to give actual notice to that party.” Cal. Code Civ. Proc. § 415.50(b). That section
11 provides that “[i]f the party to be served resides or is located out of state,” which Aric D.
12 very likely does, then the newspaper “most likely to give actual notice to that party” may
13 be located out of state, as well. Id.

14 Accordingly, Millennium’s motion for service by publication is GRANTED. The
15 summons shall be published in a named newspaper located in, around, or within a
16 reasonable distance of Phillipsburg, New Jersey, with the ability to publish legal notices in
17 accordance with California Government Code § 6064.

18 **IT IS SO ORDERED.**

19 Dated: April 26, 2023



20 CHARLES R. BREYER
21 United States District Judge
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